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09/727,593	12/04/2000	Florence P. Haseltine	12000-002001	3653

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EXAMINER

RHODE JR, ROBERT E

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/727,593

Applicant(s)

HASELTINE, FLORENCE P.

Examiner

Rob Rhode

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6 - 18, 21 - 24, 26 - 38, 41, 43 - 44, 46 - 58 and 61 - 96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims pending in the application are 1, 3, 4, 6 - 18, 21 - 24, 26 - 38, 41, 43 - 44, 46 - 58 and 61 - 96.

## **DETAILED ACTION**

### ***Response to Appeal***

In view of the appeal brief filed on 11-15-04, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, Applicant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Response to Amendment***

Applicant amendment of 11-15-04 has been entered and the applicant amended claims 1, 10, 21, 29 – 30, 41, 49 – 50 and 65 and canceled claims 2, 5, 19 – 20, 22, 25, 39 - 40, 42, 45 and 59 - 60. In addition, the applicant traversed rejections of Claims 1 - 96.

Currently, claims 1, 3, 4, 6 – 18, 21 – 24, 26 – 38, 41, 43 – 44, 46 – 58 and 61 - 96 are pending.

### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because Figure 1B includes "shading". Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 3, 4, 6 – 18, 21 – 24, 26 – 38, 41, 43 – 44, 46 – 58 and 61 - 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada (US 5,551,021) in view of Watanabe (US 6,578,072 B2).**

Regarding claim 1 and related claims 21, 41, 67, 77 and 87, Harada teaches a method, medium and apparatus for receiving feedback from a party regarding consumer-customized nonverbal information, the method comprising:

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collecting at a merchant's physical premises, an electronic version of consumer-customized nonverbal information (see at least Abstract, Col 8, lines 55 - 58 and Figures 1 - 3 and 13B).

Although Harada does disclose an image/electronic version storing and transmitting method and system, the reference does not specifically disclose and teach a method, medium and apparatus for transmitting the electronic version of the consumer-customized nonverbal information to a remote site for viewing by a party; soliciting feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party; and receiving feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party.

On the other hand in the same area of image storing and transmitting, Watanabe discloses and teaches a method, medium and apparatus for transmitting the electronic version of the consumer-customized nonverbal information to a remote site for viewing by a party (see at least Abstract, Col 1, lines 22 – 23 and 60 - 61, Col 2, lines 25 - 28 and Figures 1, 2 and 8); soliciting feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party (see at least Figure 8); and receiving feedback from the party regarding the electronic version of the consumer-customized nonverbal

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information transmitted to the remote site for viewing by the party (see at least Figure 8).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method, medium and apparatus of Harada with the method, medium and apparatus of Watanabe for providing a device with access to the merchant system with electronic access to an image of merchandise physically arranged according to a consumer, the method comprising: providing a consumer with access to physical merchandise at a merchant's physical premises; allowing the consumer to direct physical arrangement of the physical merchandise at the merchant's physical premises; capturing an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer; loading the captured image onto a merchant system; providing a device with access to the merchant system; and enabling a party who is operating, the device to access and view the captured image – in order to provide the consumer with the ability to try on clothes, have image captured and stored for reference. Harada discloses method, medium and apparatus a merchant method and system, which discloses capturing of an image, loading a captured image and allowing a device access and viewing of captured images (Abstract). Watanabe in turn discloses a method, medium and apparatus to remotely access and to view captured images' (Figures 1 – 6). Therefore, one of ordinary skill in the art would have been motivated to combine Harada with Watanabe in order to have a method, medium and apparatus disclosing the capturing of an image of a consumer with tried on

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merchandise, loading the captured image and allowing device both local and remote access and viewing of captured images. In this manner, the consumer as well as others can view the captured image of the consumer. Thereby, the method and system will allow feedback from other parties that the consumer values and thereby ensure that the nonverbal information is the best suited for them as well as storing for future reference and approval if required. Moreover, this online collaboration will ensure that the purchase is most appropriate and thereby increase the consumer's satisfaction with the purchase. In turn, the increased satisfaction of the consumer will increase the probability that they will return for additional purchases as well as recommend the site/store to others.

Regarding claim 3 and related claims 23 and 43, Watanabe teaches a method, wherein the captured image includes one or more still photos (Figure 2).

Regarding claim 4 and related claims 24 and 44, Watanabe teaches a method, wherein the digital-captured image includes a video clip. Please note that the recitation "wherein the digital-captured image includes a video clip", such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "captured image" already disclosed by Watanabe.



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Regarding claim 6 and related claims 26, 46, 72, 82 and 92, Harada teaches a method, wherein the captured image reflects a relationship between the physical merchandise and the consumer (Figure 13B).

Regarding claim 7 and related claims 27 and 47, Harada teaches a method, wherein the physical merchandise includes at least one clothing garment and the image reflects the consumer wearing the clothing garment (Figure 13B).

Regarding claim 8 and related claims 28 and 48, Harada teaches a method, wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool. Please note that the recitation, "wherein the physical merchandise includes at least one tool, and the image reflects the consumer operating the tool", such recitation is given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other "captured image" already disclosed by Harada.

Regarding claim 9 and related claims 29 and 49, Watanabe teaches a method, wherein the enabling a party who is operating the device to access and view the captured image comprises enabling the party who is operating the device to access and view the captured image in real time (Abstract, Col 2, lines 25 - 29 and Figures 1 and 2). Please note that Watanabe does not refer to real time but does address viewing captured images. However, the viewing of captured images and streaming video was old and well

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known at the time of the invention and used in Web cast. Therefore, it would have been obvious to one of ordinary skill to have provided the method of Watanabe with real time capability. In this manner, the individuals could have in real time allowed movement of the individual in order to view all sides or parts of the merchandise. In this manner, the customer's satisfaction will be increased with the added capability of movement and thereby would have increased the probability that they will return for additional shopping in the future.

Regarding claim 10 and related claims 30 and 50, Harada teaches a method, further comprising storing the captured image in the merchant system for later access by the device (Col 2, lines 21 – 23).

Regarding claim 11 and related claims 31, 51, 73, 83 and 93, Watanabe teaches a method, wherein enabling a party who is operating the device to access and view the captured image comprises authenticating the party and denying access by the device party is not authenticated properly (Col 1, lines 25 – 37) and [12 and related claims 32, 52, 74, 84 and 94] wherein the authenticating includes receiving authenticating information from the party and comparing the authenticating information with information provided by the consumer (Col 1, lines 34 – 37).

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Regarding claim 13 and related claims 33 and 53, Watanabe teaches a method, wherein enabling a party who is operating the device to access and view the captured image comprises using the Internet as a communication medium to transmit the captured images from the merchant (Figures 1, 2 and 6).

Regarding claim 14 and related claims 34, 54, 70, 76, 80, 86, 90 and 96, Watanabe teaches a method, further comprising receiving feedback from the party (Figure 8) and [15 and related claims 35, 55, 68, 78 and 88], Watanabe teaches a method, wherein the feedback includes authorization for purchase of the physical merchandise and [16 and related claim 36, 56, 69, 79 and 89] wherein the feedback includes a recommendation for purchase (Figure 8). Please note that recitations “wherein the feedback includes authorization for purchase of the physical merchandise” and “wherein the feedback includes a recommendation for purchase”, such recitation are given little patentable weight because it imparts no structural or functional specificity which serves to patentably distinguish the instant invention from the other “feedback” already disclosed by Watanabe.

Regarding claim 17 and related claims 37 and 57, Watanabe teaches a method wherein the consumer and party are a single entity (Abstract).

Regarding claim 18 and related claims 38 and 58, Watanabe teaches a method, wherein the consumer and party are different entities (Abstract).

Regarding claim 61, Harada teaches a method, wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the consumer to provide instructions to a third party regarding the physical arrangement of the physical merchandise (Col 3, lines 60 - 63, Col 6, lines 3 - 6, Col 8, lines 55 - 58 and Figure 13B and E).

Regarding claim 62, Harada teaches a method, wherein allowing the consumer to direct physical arrangement of the physical merchandise comprises allowing the consumer to physically interact with the physical merchandise (Col 3, lines 60 - 63, Col 6, lines 3 - 6, Col 8, lines 55 - 58 and Figure 13B).

Regarding claim 63, Harada teaches a method wherein capturing an image of the physical merchandise as physically arranged according to the consumer comprises capturing an image of the consumer physically interacting with the physical merchandise (Col 8, lines 55 - 58 and Figure 13B).

Regarding claim 64 and related claims 75, 85 and 95, Harada teaches a method wherein allowing the consumer to physically interact with the physical merchandise comprises allowing the consumer to wear the physical merchandise (Col 8, lines 55 - 58 and Figure 13B).

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Regarding claim 65 and related claim 66, Harada teaches a method, wherein the consumer being allowed to direct physical arrangement of the physical merchandise comprises the consumer being allowed to physically interact with the physical merchandise, and wherein the capturing code segment comprises a code segment to capture an image of the consumer physically interacting with the physical merchandise (Figure 13 D).

Regarding claim 71 and related claims 81 and 91, Harada teaches a method, wherein the consumer-customized nonverbal information comprises physical merchandise physically arranged according by a consumer, the method further comprising: providing the consumer with the physical merchandise at a merchant's physical premises (Figure 13B and E); and allowing the consumer to physically arrange the physical merchandise (Figure 13B).

### ***Response to Arguments***

Applicant's arguments filed 11-15-04 have been fully considered but they are not persuasive.

Applicant remarks at page 5 and 6 that combination of Harada and Watanabe would be directly contrary to the teachings of Harada and its intended use of keeping the photographs secret from the customer. As a result and in addition, that one of ordinary skill would not have been motivated to combine Harada with Watanabe and thereby

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would not render obvious claims 1, 3, 4, 6-18, 21, 23, 24, 26 – 38, 41, 43, 44, 46 – 58 and 61-66, 68-76 and 79 – 96 and thereby the remaining secret also teaches away from the applicant's invention.

First and with respect to the Applicant's arguments regarding Harada of keeping the photographs secret from customers and thereby having these available only for store employees in a customer management system, the reference does disclose and teach one of ordinary skill in the art that the customer has access to viewing the photographs as well as receiving copies. For example, Harada discloses and teaches that the store employee asks the customer to actually try on the merchandise and then takes a picture of them with merchandise on and prints out the picture/image, which is presented to the customer (Col 8, lines 50 – 62 and Col 9, lines 21 – 26 and Figures 1 and 13B). Thereby, the photograph of the customer wearing the just tried on merchandise is hardly kept a secret from the customer, since the photograph is shared with them by the store personal/party who has a device (i.e. printer) that has access to the method and system of Harada. Therefore, Harada would teach one of ordinary skill a "method for providing a party accessing a merchant system with electronic access to an image of merchandise physically arranged according to a consumer, the method comprising: providing a consumer with access to physical merchandise at a merchant's physical premises (see at least Abstract, Col 8, lines 55 – 62 and Figure 13B); allowing the consumer to direct physical arrangement of the physical merchandise at the merchant's physical premises (see at least Col 8, lines 55 – 58 and Figure 13B);

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capturing an image of the physical merchandise as physically arranged at the merchant's physical premises according to the consumer (see at least Figures 1 and 13B); loading the captured image onto a merchant system (see at least Abstract, Col 2, lines 1 - 7 and Figure 1); providing a device with access to the merchant system (see at least ??? and Figures 1 - 3); and enabling a party who is operating, the device to access and view the captured image (see at least Col 5, lines 57 - 63 and Col 6, lines 11 - 17 and Figures 1 - 3 and 6 - 8) , which is equivalent to "collecting, at merchant's physical premises, an electronic version of consumer-customized nonverbal information" (i.e. images/photographs) as recited in claims 67, 77 and 87. Furthermore, Harada would fairly suggest and teach that customer would know that these photographs are stored in the method and system because of both the printing a copy for them as well as the photographs to be used for display during house calls (Col 6, lines 3 - 17 Figure 1 and Figure 22A). As a result, Harada does not teach away from the claim limitations regarding a method and system for "collecting device to collect, at merchant's physical premises, an electronic version of customized nonverbal information".

Second and while Harada does not specifically disclose and teach "a transmitting device for transmission of the photographs to a remote site as well as a sending device to enable solicitation of feedback", the reference does suggest and teach that photographs/images are transferred electronically (i.e. transmitted) as well as received (Col 14, lines 1 - 7 and Figure 1 and 22A - B). Moreover, Harada does disclose and teach that the photographs can be transmitted to a CD-ROM, which in turn can be

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installed in a personal computer for display (Col 48 – 49) as well as a an External I/O Unit (Figure 1). Furthermore, Harada discloses and teaches that the method and system can be used in any system, which handles images (Col 15, lines 50 – 52). Thereby with these teachings alone and given the age of the reference (August 27, 1996), it would have been obvious to one of ordinary skill in the art to extend the transmitting of Harada to a remote site using a network such as the internet to a device such as a PC for viewing the stored photographs by a party – rather than using the CDROM. However, Harada does not specifically disclose and teach regarding current claims 1, 21 an 41 of “providing a device with access to the merchant system, wherein the device is physically remote from the merchant’s physical premises; and enabling a party which is operating the device to access and view the captured image” nor regarding claims 67, 77 and 87 “transmitting the electronic version of the consumer-customized non verbal information to a remote site for viewing by a party; soliciting feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party; and receiving feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party”. On the other hand Watanabe in the same area of handling, storing and sharing images such as photographic images, the reference does suggest and teach to one of ordinary skill in the art of a method and system for “transmitting the electronic version of the consumer-customized non verbal information to a remote site for viewing by a party (Col 1, line 22 – 23, 60 – 65 and Figures 1, 2, 6 and 8); soliciting feedback from



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the party regarding the electronic version of the customized-customized nonverbal information transmitted to the remote site for viewing by the party (Col 4, lines 4 – 9, Col 9, lines 55 – 67, Col 10, lines 11 - 13 and Figure 8); and receiving feedback from the party regarding the electronic version of the consumer- customized nonverbal information transmitted to the remote site for viewing by the party (Col 4, lines 4 – 9, Col 9, lines 55 – 67, Col 10, lines 11 - 13 and Figure 8)". Thereby, Harada discloses a method and system for a "collecting device to collect, at merchant's physical premises, an electronic version of customized nonverbal information" (Figures 1 and 13B). In turn, Watanabe discloses a method and system for transmitting the electronic version of the consumer-customized non verbal information to a remote site for viewing by a party; soliciting feedback from the party regarding the electronic version of the customized-customized nonverbal information transmitted to the remote site for viewing by the party; and receiving feedback from the party regarding the electronic version of the consumer- customized nonverbal information transmitted to the remote site for viewing by the party (Col 1, line 22 – 23, 60 – 65 and Figures 1, 2, 6 and 8)". Therefore, one of ordinary skill in the art would have been motivated to extend the method and system of Harada with a method and system for transmitting the electronic version of the consumer-customized non verbal information to a remote site for viewing by a party; soliciting feedback from the party regarding the electronic version of the consumer-customized nonverbal information transmitted to the remote site for viewing by the party; and receiving feedback from the party regarding the electronic

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version of the consumer- customized nonverbal information transmitted to the remote site for viewing by the party.

The Applicant remarks at page 7 that the combination of Harada and Watanabe do not disclose and teach all the limitations in claims 15, 16, 35, 36, 55, 56, 68, 69, 78, 79, 88 and 89 and specifically "wherein the feedback includes an authorization for purchase of the physical merchandise" and "wherein the feedback includes a recommendation for purchase".

First, Harada does suggest and teach that purchase of the physical merchandise (Col 7, lines 35 - 36). Second and as disclosed and taught by Watanabe, the method and system does disclose the capability for "soliciting feedback" as well as "receiving feedback", which includes purchase (Col 4, lines 10 and Figure 8). Moreover, online collaboration between parties is old and well known. For example, online collaboration with a sales agent and a third party are often used to guide the person through in order to obtain authorization to purchase. Thereby, it would have been obvious to one of ordinary skill in that the feedback can and does include either a recommendation or authorization for purchase.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **(703) 305-8230**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(703) 308-1344**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

**Alexandria, Va. 22313-1450**

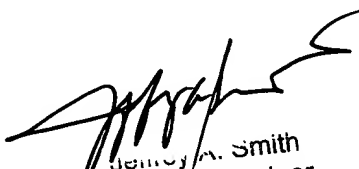
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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal  
Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

RER



Jeremy M. Smith  
Primary Examiner